SUPREME COURT, U. S.

JUN 18 1968

JOHN F. DAVIS, CLERK

IN THE

Supreme Court of the United States

OCTOBER TERM, 1968

No. 207

THE MARYLAND PETITION COMMITTEE, et al,
Petitioners,

v.

LYNDON B. JOHNSON, et al,
Respondent.

The Petition for a Writ of Certiorari to the United States Supreme Court

GEO. WASHINGTON WILLIAMS,
231 St. Paul Street,
Baltimore, Maryland 21203,
Attorney for Petitioners.

King Bros., Inc., 208 N. Calvert St., Baltimore, Md.

INDEX

	Page
Statement of the Case	3
Jurisdiction	5
Questions Presented	
I. Whether the Fourteenth Amendment was constitutionally proposed or ratified and for a construction of Article V in respect thereto and general enlightenment?	5
II. Whether the Petitioners are competent to bring this action?	8
III. Whether there is a justiciable issue?	11
IV. Whether Laches can be pleaded when the construction of the Constitution (and Acts of the Congress) are involved?	12
V. And incidentally whether the President may be made a party to such actions?	13
VI. As to the scope and effect of the General Relief Prayer	14
Conclusion	15
Appendix	
The Petition	App. 1
District Court Opinion, see CCA Record	App. 1

Table of Cases

Brown vs The Board of Education, 297 U.S. 489	6
Coleman vs. Miller, 307 U.S. 433	3, 11
Fairchild vs. Hughes, 258 U.S. 130	3
Field vs. Clark, 143 U.S. 302	3
Flast vs. Cohen, 416 U.S. (1967)	6, 8, 10
Frothingham vs. Mellon, 262 U.S. 447	3
Georgia vs. Stanton, 73 U.S. 50	11
Hollingsworth vs. Virginia, 3 Dall. 378	4
International Salt Co. vs. U.S., 322 U.S. 392	10
Leser vs. Garnett, 258 U.S. 130	12

	Page
Massachusetts vs. Mellon, 262 U.S. 447	3
McCardle, Ex Parte, 7 Wall. 506	7, 11
Merryman Case	13, 14
Mississippi vs. Johnson, 4 Wall. 475	11
Missouri Pacific Ry. Co. vs. Kansas, 248 U.S. 276	7
Neese vs. Southern Ry. 350 U.S. 77, 78	13
President Cases	11
Rhode Island vs. Palmer, 353 U.S. 350	7
Roberts vs. City of Boston, 59 Mass. 1198 (1849)	10
U. S. vs. Association of Citizens Councils, W.D. La., 187 F. Supp. 846, 848 (1960)	12
U. S. vs. Rabinowitz, 399 U.S. 408	10
U. S. vs. Sprague, 282 U.S. 716	8
Wickard vs. Filburn, 317 U.S. 111	7, 14, App. 2

Pertinent Constitutional Articles and Amendments

Article I, Section 3	App. 3
Article I, Section 7	4, App. 3, 4
Article II, Section 2	App. 3
Article II, Section 5	App. 4
Article V	4, 5, 8, 11, 14, App. 3
Amendment XIII	7
Amendment XIV	7, 10, (Debates on, page 10) App. 2, 5, 6
Amendment XV	4

Other Authorities and Citations

Congressional Globe of 1866	6, App. 3
Congressional Globe of 1869	4
Chief Judge Cooley	13
Justice Grier	7
Hamilton, *The Federalist,* Article 60	9
Justice Holmes	9
Madison, *The Federalist* Article 45	9
Madison's Notes	App. 4
Reconstruction Act of March 2, 1867	7

Page

Secretary Seward's Letter to Governor of Maine....App. 6
Secretary Seward's Proclamation ..... 7, App. 5, 6
Chief Justice Shaw 10
Story, Joseph 13
Senator Sumner 10
Chief Justice Taney 14
Warren, Charles 11, 12, 13
Justice White 7
Justice Whittaker 6

IN THE

Supreme Court of the United States

OCTOBER TERM, 1968

No. .....

IN THE MATTER OF THE

MARYLAND PETITION COMMITTEE, a membership corporation, P. O. Box 1631, Annapolis, Maryland 21400

ZELNER ALBRITTON, Individually and Taxpayer and Grandfather, Custodian and Next Friend of ELLENDA L. ALBRITTON, Infant, Route 1, Box 99, Arnold, Maryland 21012

PETER T. DODSON, Individually and Taxpayer and Father and Next Friend of WILLIAM T. DODSON, Infant, Bristol, Maryland

MARLAND W. DUVALL, Individually and Taxpayer and Father and Next Friend of BRYAN M. DUVALL, Infant, Box 329, Jessup, Maryland 20794

WILLIAM M. BRAILSFORD, Individually and Taxpayer and Father and Next Friend of EDWARD B. and KATHRYN ANN BRAILSFORD, Infants, 1913 Willow Spring Road, Baltimore, Maryland 21222

ALICE J. BARKSDALE, Individually and Mother and Next Friend of CHRISTINE G. and MARGO C. BARKSDALE, Infants, Lothian R.R., Maryland 20820

Petitioners

vs.

LYNDON B. JOHNSON, President of the United States of America

and

HUBERT H. HUMPHREY, Vice-President of the United States of America and President of the United States Senate

and

JOHN W. McCORMACK, Speaker of the House of Representatives

and

ACTING ATTORNEY GENERAL OF THE UNITED STATES OF AMERICA

and

As Representatives of the United States of America

Respondents

The Petition for a Writ of Certiorari to the United States Supreme Court

The Maryland Petition Committee, et al, in a Class Suit Petition for a Writ of Certiorari to review the Judgment

of the United States Circuit Court of Appeals for the Fourth Circuit entered in the case on March 21, 1968.

OPINIONS

The opinion of the Circuit Court of Appeals is not yet reported. It is merely a PER CURIAM, as follows:

> "Upon consideration of appellees' motion to affirm the judgment of the District Court, 265 F. Supp. 823 (D.Md.1967), it is
>
> "ORDERED by the Court that appellees' motion to affirm is granted and that the judgment of the District Court now on appeal is affirmed."

QUESTIONS PRESENTED

1. Whether the Fourteenth Amendment was constitutionally proposed or ratified and for a construction of Article V in respect thereto and general enlightenment?

2. Whether the Petitioners are competent to bring this action?

3. Whether there is a justiciable issue?

4. Whether Laches can be pleaded when the construction of the Constitution (and Acts of the Congress) are involved?

5. And incidentally whether the President may be made a party to such actions?

6. As to the extent of the Court's power under the Prayer for General Relief?

7. As to the scope and effect of the General Relief Prayer?

STATEMENT OF THE CASE

The Petitioners, The Maryland Petition Committee, et al, instituted this action in the United States District Court at Baltimore, Maryland, to enjoin the enforcement of the Fourteenth Amendment (and all laws enacted in pursuance thereof), as it was never constitutionally proposed or ratified in accordance with (said) Article V. The District Court dismissed the Petition on the grounds that the Petitioners (a) were not entitled to relief as they had no standing as taxpayers, citizens, voters and interested parents of school children, as shown in the cases of *Frothingham* vs. *Mellon,* 262 U.S. 447 and such as *Fairchild* vs. *Hughes,* 258 U.S. 130, and (b) implied that it was a political matter and (c) because the Courts will not go back of the public action of the officers of the Congress and President, and (d) implied that the President was sacrosanct in such matters, and (e) implied that Laches applied or had a substantial effect on the matter.

As to going behind the back of the official act of Congress, the Court in *Field* vs. *Clark,* 143 U.S. 302, dealing with a matter of regular legislation, and recognizing the courtesy due the Congress, ignored the obligation due to the Constitution and held that they would not enter the thicket of legislative procedure to determine just what was enacted. As to the *instant case,* we oppose and contest that view, as the Constitution is explicit as to what is required, and the Record is clear and must be recognized.

The case of *Coleman* vs. *Miller,* 307 U.S. 433, was somewhat of a thicket matter, but the *Congressional Globe* is clear and available, as see said Exhibit No. 2.

The basic question is (a) whether *vel non* the Amendment was proposed by the House of Representatives, as

the vote for it was only 120 out of a House of 184 members of this (Rump) Congress. This raises the vital question as to whether Article V required two-thirds of the *elected* members or merely two-thirds of those *present.* It is here contended that two-thirds of the "elected" members is, and was, clearly required.

The word "present" will be found when the majority for the action of the Senate on Treaties was provided for.

Furthermore, that word was subjoined to the one-fifth required for ordering the yea or nay vote, thus showing that the word "present" was a well-known word to them.

The Fourteenth Amendment is an abortion, having been brought about by force and not by natural birth.

The *facts* of the case are virtually not in dispute, and as to the law, we are dealing with a *construction* of *Article V* and not *Article I, Section 7.* This requires a *fresh* consideration of the matter, and particularly in regard to the extent that *the Congress must show by its Records or otherwise* that it has *complied with said Article V* and it cannot use *said Section 7* to do so, as it deals solely with matters of regular legislation.

This area of operation has been recognized to be, and is clearly outside of Section 7 of Article I, and is *not legislative,* as to which see *Hollingsworth vs. Virginia,* 3 Dall 378, and the discussion of the *Fifteenth Amendment* in the Congress as reported in the *Congressional Globe of 1869,* page 1563, in regard to the need for the President's signature; hence, *Impeachments* are handled as by a court proceeding and the *Treaties* by the Senate alone as extracurricular and extra legislative work. However, the Courts have not thus checked the Constitution in dealing with Amendments, to determine the majority

required in proposing Amendments, as obviously required by Article V.

JURISDICTION

The Judgment of the Court of Appeals was entered on the 21st day of March, 1968, supra, sustaining a motion of Appellants to dismiss on the record. 28 U.S.C. 2101 and Rule 23.

I

The Fourteenth Amendment was neither constitutionally proposed nor ratified.

The Constitution Article V states that:

(a) "The Congress, when two-thirds of both Houses deem it necessary, shall propose Amendments," which

(b) "shall be valid to all intents and purposes" when "ratified by . . . three-fourths of the several States . . ."

A. And as to Proposals: Petitioner's Exhibit No. 2 shows a House Proposal vote of 120 to a House of 184 members and therefore the Proposal did not receive two-thirds of the House. The House acted on two-thirds *present*, and this sustains the allegations of the Petitioners that the Proposal was and is unconstitutional.

This is the *first time,* as far as we know, that the Court has ever been called upon to make *a clear and direct construction of Article V on the ground above set forth,* the *basic* and the *first ground* to be considered in determining the amendment's validity; therefore, the Cases so far considered, do not need to be considered here, as they went off on side issues and particular facts without considering this point.

This leads us to the question of the actual and natural and literal meaning of that Article, when so considered, and it will be found that it means two-thirds of the "elected members", as shown by the application of the maxim *Expressio Unius est exclusio alterius,* and we find confirmation of this normal construction was used by retired Justice Whittaker in a speech made in Washington, February 14, 1967 before the American Enterprise Institute, as he used the word "elected" members, not merely those *present* when referring to Constitutional amendment.

There was a clear obligation on the part of the House to make *clear* on the *available record that a two-thirds majority existed,* and not to leave a loophole for chicanery or other fraud, the necessity of which is quite clear, we contend, and particularly in connection with this Amendment. The vote, now, is clear from the *Congressional Globe of 1866.* Exhibit No. 2.

The President, *as a check,* was and is in no way involved in the *Impeachment* and *Treaty* provisions, so the obligation on the House is *therefore stronger.* Checks and balances were provided for to prevent abuses of power. We therefore, are calling upon the Court to give the legal meaning of Article V.

Irrespective of form, this is essentially and substantially a Class Suit, but in view of the decision in the *Flast* vs. *Cohen Case,* this is not now deemed of importance here, though it is not *waived* if it proves essential and is pressed.

B. The ratification of the Amendment was not done constitutionally. *First,* at least seven (7) southern states had been recognized and accepted as *de jure* states, as their vote was necessary to the Ratification of the

Thirteenth Amendment. See Secretary Seward's Proclamation, a Public Document, and as to which there can be no dispute. (Pet. Exhibit No. 1)

Yet, when they voted to reject the Fourteenth Amendment, their rejecting vote was ignored, and a Demand was made by the *Reconstruction Act of March 2, 1867,* that they and the others, ratify the Amendment before they would be accepted, and to coerce a reversal, the Congress placed the South under a Military Government, and this Act got the Supreme Court itself, in the *McCardle Case,* 7 Wall. 506, in an unenviable position. See Justice Grier's Statement. The story of this case is too well known to require further comment.

In view of the above, it is inconceivable that the Fourteenth Amendment came to be considered or accepted as a Constitutionally sound instrument and to be part of the Constitution, and its virus has about wrecked our once dual form of Government, and, together with the *Wickard* vs. *Filburn case,* 317 U. S. 111, and the general welfare cases, have inoculated the bulk of the States to a point where they act like a cripple, using Uncle Sam as a crutch.

In *Rhode Island* vs. *Palmer,* 253 U. S. 350, the question was not analyzed but was disposed of by *ipsa dixit* by the Court, which brought a comment by a member of the Court, Justice White. *Our contention is that it was never checked against the whole Constitution, the basic rule of construction.*

The same as to the *Missouri P. R. Co. of Kansas Case,* 248 U. S. 276. Until this is done, it is still an open question, which we are now presenting to the Court.

In some of the cases pertinent hereto, the Court did discuss the question of jurisdiction to decide the question,

and it is the decision therein that we now contest, as it is the Court's business to tell all the world, when called upon, *what Article V means in our situation,* else it solely rests in the hands of politicians, to avoid which the Supreme Court was at least partially provided.

The question of the validity was raised in *U. S.* vs. *Sprague*, 282 U. S. 716, and the Court disposed of it by referring to the Prohibition case, which also ignored our Point.

II

As to the capacity of the petitioners to sue.

The breadth and depth of the Constitution involves individual as well as collective and all other rights. If one is charged with crime, he is permitted to wrap around himself, heinous as the crime may be, the sacred folds of the Constitution, and yet, it is here concluded that these taxpayers, etc., who from deep feelings on such matters as the school, reapportionment and other vital public problems of public knowledge, interest, and concern, which are supported by this obviously unconstitutional amendment, which is, therefore, a mere parasitic growth on the Constitution, and yet we legal arborculturists are so far fenced off from this parasitic attachment to the trunk of *our* Constitutional tree.

The Courts, seemingly, at least, instead of permitting vigilance in the protection and defense of the Constitution, are injecting impediments and have put limitations on those who are, at least in their minds and deep feelings, defending the Constitution, as in this case. We contend that the *Flast* case supports Petitioners' Right and Standing to bring this case to Court, as we are striking at the *basis* of the Federal legislation that is depriving them of

their right of choice in their local government. This is not a *political question,* but a *question of power* under Article V.

The local matter involves a *deep sense of feeling* and *social welfare,* and without feelings a Person is little better than a *Perambulating Hunk of Flesh.* The *Right of Choice* is one of the most important Personal Rights of man. A general law involving equal rights does not deprive either side of his fundamental right of choice. The rights of both are merely competitors in the Marketplace of Justice Holmes. The Founding Fathers recognized this, as to local matters, by this statement in *The Federalist,* Article 60, by *Hamilton*:

> "There is *sufficient diversity* in the state of property, in the genius, *manners, and habits of the people of the different parts of the Union,* to occasion a *material diversity of disposition* in their *representatives towards the different ranks and conditions of society.* And though an intimate intercourse under the same government will promote a gradual *assimilation in some of these respects,* yet there are causes, *as well physical* as moral, which may, in a greater or less degree, *permanently* nourish different propensities and inclinations in this respect," so, a matter of choice was recognized. (Emphasis supplied).

and by *Madison,* in Article 45, that:

> "The powers delegated by the proposed constitution to the *federal* government are *few and defined.*" (sic) "Those which are to remain in the State governments are *numerous and indefinite.* The former will be exercised on *external objects,* as war, peace, negotiation, and foreign commerce;*** The powers reserved to the States *will extend to all the*

objects which, in the ordinary course of affairs, concern the lives, liberties, and properties of the people, and the *internal order,* improvement, and prosperity of the State." (Emphasis supplied).

The Fourteenth Amendment has been used to nullify the effort to protect the States.

Equal Protection of the Laws does not mean that each Person is entitled to have or enjoy any specific thing or any place with another Person, as pointed out by the great Chief Justice Shaw in *Roberts* vs. *City of Boston,* 59 Mass. 1198 (1849), a case brought by the powerful integrationist Senator Sumner.

Equal Protection of the Laws has developed a "momentum" of "self-extension" by a "creeping" process, *Int. Salt Co.* vs. *U. S.,* 322 U.S. 392, and *U. S.* vs. *Rabinowitz,* 339 U. S. 408, which has resulted in a virtual absorption of the States in many of their most important aspects—and these methods have not yet been abandoned, even though in some respects they have been modified.

The Fourteenth Amendment was never intended to do more than protect *Civil Rights* as commonly understood. "Civil Rights" does not include such matters as schools, as shown by the Debates on the Fourteenth Amendment and the History of the States. The two *Federalist* quotations are of supporting character—so, the Petitioners conclude, with all respect and permissible emphasis, that they come within both the spirit and the letter of the *Flast* Case. These Petitioners, aside from the States' interest, are asserting their *own interests* as they *existed at the time they were stricken down in such as the School Cases.* They are asserting *specific rights* growing out of *personal injury* to them, and their *feeling and right of choice*—aside from the forceful taking of the States'

rights as a political institution which reacts on them, and prevents them from maintaining the *Status quo.*

III

Whether the question is a political or a justiciable question.

The question here involves indisputably and ineradicably a matter for the Courts, *namely,* whether the *procedure* required by Article V was followed. This in no way involves the *substance* of the Amendment, and it is the *substance alone* that is political, which is also, we submit, indisputable by any intelligent and informed and disinterested person; so, *if the Act of the House is laid up against Article V,* one or the other *falls,* and we answer by the language of *Mr. Charles Warren,* in his History of the Supreme Court, the Constitution is still the law, and not the decisions, and it is not overridden by *Coleman* vs. *Miller,* supra, which remarked that the *political departments* had accepted it. The Constitution, as here presented, is not to be brushed off that easily—by any blinking or purblinding process. *McCardle* merely acknowledged the Constitutional power of the Congress to restrict the Court's appellate jurisdiction. In the case of *Georgia* vs. *Stanton* the Court did refuse to strike down the Reconstruction Act on the ground that the issue was political.

Without dealing further with the irrelevant cases, we stand on our statement that this question involves *solely* the matter of *procedure,* which is in no way to be *contaminated by the Congress that was apparently reeking with politics,* which is too well known to require citations. Its politics could in no way infect the *procedure,* except by the Court's failure to function in this legal field as in connection with the *McCardle* and the *President* cases;

and we therefore urge the Court to deal with this matter in *its clear, legal and jurisdictional stance.* This not being a matter for deference to coordinate bodies, in proper matters we have no objection, but we do object here as it involves a *clear case* of constitutional construction.

IV

Laches is not pleadable or interposable by the Courts.

In several cases a suggestion of this character has been made. See *Leser* vs. *Garnett,* 258 U. S. 130, and *United States* vs. *Association of Citizens Councils,* W.D. La., 187 F. Supp. 846, 848 (1960).

Charles Warren, Esq., in his *The Supreme Court in United States History,* has answered that interjection thus: "However the Court may interpret the provisions of the Constitution, it is still the Constitution that is the law and not the decisions of the Court". The Constitution is, in effect, displaced by Interpretation, but like Banquo's Ghost it will appear again to shake out the kinks of the Court law. We have repeatedly seen of later years the attempt of the Courts to shake out their own kinks by further compounding public problems and confusing the public mind. This fact has not disturbed the courts, as we see from such as the school, reapportionment and other cases where the Fourteenth Amendment and the Commerce clause are used as Constitutional supports.

We, without further ado, contend that the Plea of Laches is untenable, and should not help to side-step the Constitution or to interfere with the Court's duty, along with the President, *et al,* to "preserve, protect and defend the Constitution." That is a primary function of all Public Officials and Courts, so, therefore, we contend that the Court must give controlling consideration to the Con-

stitution and should not allow the fog of politics and disorganized society to obscure its vision from Mt. Olympus. *Time* does not cure a wrong against the Constitution, as it may in private litigation, as Mr. Warren and Messrs. Cooley and Story have agreed.

V

There is no general immunity granted the President in such cases.

There is no general Constitutional immunity of the President and he is therefore subject to the power of the body designed to see that the Constitution operates on all offices and officers alike, and that all are kept within the bounds thereof—however unenviable the job at times may be. Respect, of course, is due to all Branches of the Government, but not surrender to them.

We have noted that the Court has at times considered and handled that power with questionable delicacy, notably in the Civil War President's cases. The Court should make its interpretations and decisions according to its best judgment and let the chips fall where they may, as in the Civil War *Merryman Case,* or let the blood be on whose head it falls.

We do not think that thickets or other impediments should be interposed to protect those who *pretend* to act under Constitutional authority, even though we know the policy of the Court is to avoid such a question if *possible*—and the second possibility is subject to considerable expansion. Note the *Per Curiam* in case *Neese* vs. *So. Ry.*, 350 U. S. 77, 78, among others. Neither should a lack of diligence on the part of, or a connivance thereat by the public, be a reason for using myopia, blind-spotting or by-passing the Constitution—until, as now seen, the sub-

stance of our form of Government has been practically destroyed, NOTE, such as the *General Welfare and Wickard* vs. *Filburn cases,* 317 U. S. 111, and such as the recent *so-called Civil Rights* and *Commerce Clause* cases.

VI

As to the scope and effect of the general relief prayer.

Your Petitioners ask for consideration of the General Relief Prayer. That the true meaning of Article V is the most important item here involved; and will be in the future, when proposals and ratifications are involved, as has been above shown; therefore, your Petitioners are pressing for a construction thereof under this heading, as we have *hereinabove emphasized,* that this is the *first time* that the Court has had presented to it the Amendment under the *Four Corner rule of construction viewpoint* and the Maxim to be used as a guide in connection therewith.

We have seen the truth, in this connection, of the old apothegms that once an error is made it grows in geometrical progression, as widely believed here, and at least, therefore, these phases of Article V should be reconsidered and the Constitutional atmosphere, now murky, be cleared, and let the chips fall where they may, as did Chief Justice Taney in the *Merryman* case, and as future guidance.

It is high time that the Amendment is examined in its true perspective. The question is now here in its true perspective.

CONCLUSION

The matter and facts set forth in this Petition are matters of Public Record of notice and most is of general knowledge to the legal and kindred professions. There is to be expected no substantial dispute, so therefore the case can be disposed of as the law applicable in premises;

Therefore, we conclude that the Court should

1. Grant the Prayer of the Petitioners in their personal interest and in the interest of good Constitutional Government, and

2. In any circumstance, interpret Article V of the Constitution as a guide for the future, even though Laches may be applied to the past, and

3. Thus give the Constitution the respect to which it is entitled.

Respectfully submitted,

GEO. WASHINGTON WILLIAMS,
231 St. Paul Street,
Baltimore, Maryland 21203,

Attorney for Petitioners.

APPENDIX

PETITION FOR DECLARATORY JUDGMENT

The Honorable, The Judges of Said Court:

The Petition of The Maryland Petition Committee, a membership corporation; Zelner Albritton, individually and taxpayer and grandfather, custodian and next friend of Ellenda L. Albritton, infant; Peter T. Dodson, individually and taxpayer and father and next friend of William T. Dodson, infant; Marland W. Duvall, individually and taxpayer and father and next friend of Bryan M. Duvall, infant; William M. Brailsford, individually and taxpayer and father and next friend of Edward B. and Kathryn Ann Brailsford, infants; and Alice J. Barksdale, individually and mother and next friend of Christine G. Barksdale and Margo C. Barksdale, infants, for declaratory judgment, respectfully represents unto Your Honor:

THAT the Maryland Petition Committee is a membership corporation, incorporated under the Laws of the State of Maryland, for the purpose of protecting its members and other like-minded citizens and people in like or similar situations, circumstances and conditions in their rights and privileges under the Constitution of the United States and the State of Maryland, whose address is P. O. Box 1631, Annapolis, Maryland.

THAT the individuals, Zelner Albritton, Peter T. Dodson, Marland W. Duvall, William M. Brailsford and Alice J. Barksdale are all citizens of the United States and registered voters of the State of Maryland. Among other things they are also parents or custodians and next friends of students attending the Public Schools of the State of Maryland.

I.

1. That during relatively recent years, your Petitioners have believed, and now do believe, and therefore do allege, that there have been various invasions of the rights and

reserved powers of the State of Maryland and of the rights of your Petitioners, and of the other citizens and States of the Union, by the Supreme Court, the Congress and the Executive Departments of the United States, predicated upon and citing the power and authority alleged to be contained in the Fourteenth Amendment to the Constitution of the United States in support of and authorizing said and other such actions as have been taken and done, with the aforesaid result, and the *pro tanto* destruction of our much cherished Federal System of government, which, while being praised by lip service, is being destroyed, in fact, by degrees by such as, among others, the School and the Reapportionment cases, and such actions, and there is now every reason to expect that the said Court and Congress and Departments of the Federal Government will continue the present course in their work in the future, under the alleged authority and power of the said Fourteenth Amendment, and by such as the so-called Civil Rights acts, and Executive orders, which will, either directly or indirectly, make the States mere tributaries to, rather than recognizing them as constituent members of the United States, thus grieviously exercising the power of a Procrustes, with a Gargantuan appetite, over the States and people, as aforesaid, and which are expected to continue during an unpredictable and unfathomable future, as aforesaid, which will mean the total absorption of the States and the consolidation of all powers of government in one massive and overpowering government, by both direct and indirect methods and practices, such as using Federal funds in the light of *Wickard* v. *Filburn*, 317 U. S. 111, and thereby virtually destroying the venerated Constitution, thus emphasizing the over-weaning importance of this proceeding and the great damage to the citizens and the States of the Union; and

4. That, as aforesaid, these usurpative and destructive acts have been predicated upon the alleged all-inclusive authority contained in the said Fourteenth Amendment, thereby proceeding upon the supposition and assumption that the said Amendment is a true and valid part of the

organic instrument of our Government, the Constitution of the United States, as will appear from the photostatic copy of proclamation of the Secretary of State attached hereto, marked "Petitioners' Exhibit No. 1" which, as a matter of fact and constitutional authority, is not legally true, as the said Amendment was never proposed by the Congress, it is believed and therefore alleged, as required by the said Constitution, because the House of Representatives of that (Rump) Congress of 1866 was composed of at least 184 members, and the vote was only 120 for the "proposal" thereof, which did not represent two-thirds "of both Houses," as required by Article V of the Constiution, as will appear from the photostatic copy of "Congressional Globe" of 1866, page 3149, attached hereto and marked "Petitioners' Exhibit No. 2".

5. That the said Article V provides, as aforesaid, that "The Congress, whenever two-thirds of both Houses shall deem it necessary, shall propose amendments to this Constitution;". That two-thirds "of both Houses" are required to propose an amendment, which negatives any right to propose amendments, an extra-curricular and extraordinary power of the Congress, by two-thirds "present," and to further support this interpretation of the said Amendment, your Petitioners refer to other pertinent and controlling parts of the Constitution, to *wit*:

A. That in connection with Impeachment it is provided that "**** No Person shall be convicted without the concurrence of two-thirds of the Members present." (Section 3 of Article I), and in this connection the Senate acts alone.

B. The language by which the President was given power to make treaties is as follows: "He shall have power, by and with the advice and consent of the Senate to make treaties, provided two-thirds of the Senators *present* concur." (Section 2 of Article II), and also in this connection the Senate acts alone; and

C. In providing for the recording in the Journal of the Yea and Nay votes, it is said that, "the Yeas and Nays of the Members of either House on any question shall, at the Desire of one-fifth of those present, be entered on the Journal," and if the word "present" had been omitted the vote required would have been one-fifth of the majority, as it is provided that "a Majority of each shall constitute a quorum to do business," meaning the regular and ordinary business of the Congress (Section 5 of Article II), and when more than two-thirds of those present was required, the word "Present" was not included; and

D. That the Founding Fathers were familiar with the use of the words "present" and "majority" and used them intelligently and discriminately to express their purpose and meaning is shown by their use in the Debates in the Constitutional Convention, as shown by Madison's notes in the Congressional Library as appearing in the volume edited by E. H. Scott at pages 453 and 72, the former dealing with Presidential vetos, and the latter dealing with admission of new States, a copy of which pages are attached hereto and marked "Petitioners' Exhibit No. 3"; and

E. That another evidence that amending the Constitution is not ordinary legislation, as provided for in Section Seven of Article I, but is extra-curricular in character, is the fact that Presidents are not authorized or required to in any way participate in amending the Constitution; and

F. That so, as was alleged, when it came to the proposing of amendments, the word "present" being absent, the only natural, legal and reasonable conclusion to be made from this conscious difference is, as aforesaid, that the vote required was "*two-thirds* of both Houses," thus showing the discernment and discrimination of the Founding Fathers in forming our fundamental and organic law; that any other construction would throw discredit on the Founding Fathers as, if there was no other direction or indication, two-thirds of both Houses would

have been controlling in the ordinary and regular course of all Government business, and it is believed and therefore alleged that the maxim *expressio unius est exclusio alterius* is the only rational and ruling guide to a fair and just interpretation of said Article V.

II.

1. That it is equally clear for another reason, as the Fourteenth Amendment is not constitutionally a part of the Constitution, as appears upon the face of the Public Records of the United States Government, that the Congress ignored the vote and action of seven Southern States which they had received into the Union subsequent to the official end of the Civil War, *namely,* Virginia, Louisiana, Arkansas, Tennessee, South Carolina, Alabama, North Carolina and Georgia, in that they had previously accepted the officially necessary vote of said States for the Thirteenth Amendment, without which that Amendment could not have been promulgated, as appears from the ratification thereof by the Proclamation of the Secretary of State (Seward) on the 10th of December, 1865, as appears from the photostatic copy thereof attached hereto and made a part hereof, and marked "Petitioners' Exhibit No. 4," and by a Letter to the attorney for the Petitioners hereto attached and marked "Petitioners' Exhibit No. 5," and by a Resolution of the Congress it was provided that no vote of said States would be received or recognized until the Fourteenth Amendment had been ratified by it, thus playing Dr. Jeykll and Mr. Hyde with the States, and sleight of hand with the Federal government; and

2. That, *inter alia,* the said Proclamation states that, "in all, twenty-seven States" had reported approval of said Amendment, and whereas the *"whole number of States in the United States is thirty-six,"* (emphasis supplied), and whereas, they "constitute three-fourths of the whole number of States," the same was declared to be "a part of the Constitution of the United States."; yet and notwithstanding this, their vote was ignored within a year in

connection with the proposal of the Fourteenth Amendment; and

3. That, in connection with the vote to ratify the Fourteenth Amendment, the vote of all the said *seven Southern States* was rejected, thus leaving twenty-one States voting on the Amendment, which did not constitute three-fourths of the States to whom the said Amendment had been officially sent, as illustrated by the attached copy of the transmittal paper from the said Secretary of State to the Governor of Maine, filed herewith and made a part hereof, and marked "Petitioners' Exhibit No. 6"; and

4. That, further, while the States of Ohio and New Jersey at first (January 15, 1867 and March 5, 1867, respectively) voted to ratify the said Amendment, each of these States later voted to withdraw said approval and voted to reject the Amendment, as appears from the Proclamation of the Secretary of State, which was before the ratification allegedly became final; that the favorable vote of the first of the Southern and rejected States was not received until April and June, 1868 and the other States thereafter, the last being on February 18, 1870, as will appear from the copy of the Proclamation attached hereto and marked "Petitioners' Exhibit No. 1"; and

5. Thus, these pertinent and controlling parts of the Constitution invoke, aside from common sense and reason, in order to properly interpret the same, the maxim *expressio unius est exclusio alterius,* and it is clear that when the much praised and applauded Founding Fathers meant "present" to control, they, in their wisdom, experience and knowledge, expressly said so, and when they meant otherwise, they omitted the use of the word "present," and this clearly shows and irrefutably demonstrates, on the face of the Record, that said Amendment was not proposed as demanded by and on the face of the Constitution, nor was it legitimately and constitutionally ratified on account of the juggling of the States as above set forth, and therefore, the decision in the case of *Brown* v. *The Board of Education,* 297 U. S. 489 and the Reapportionment cases were without constitutionality, and

all the acts of Congress and the Executive Department of the Government that were done under the authority of that Amendment were, and are, null and void and of no effect.

III.

1. That the Amendment is so broad that we are literally living under a government of men rather than Constitutional law, notwithstanding our perennial boast that it is a government of law and not of men.

WHEREFORE, your Petitioners pray:

A. That this Honorable Court declare the said Fourteenth Amendment null and void and of no effect for the reasons above presented by your Petitioners, and enjoin the further enforcement of any of its provisions; and

B. For such other and further relief as the exigencies of their case may require.

LIBRARY
SUPREME COURT, U. S.

No. 207

Supreme Court, U.S.
FILED
JUL 15 1968
JOHN F. DAVIS, CLERK

In the Supreme Court of the United States

OCTOBER TERM, 1968

THE MARYLAND PETITION COMMITTEE, ET AL.,
PETITIONERS

v.

LYNDON B. JOHNSON, ET AL.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

MEMORANDUM FOR THE RESPONDENTS IN OPPOSITION

ERWIN N. GRISWOLD,
Solicitor General,
Department of Justice,
Washington, D. C. 20530.

In the Supreme Court of the United States

OCTOBER TERM, 1968

No. 207

THE MARYLAND PETITION COMMITTEE, ET AL.,
PETITIONERS

v.

LYNDON B. JOHNSON, ET AL.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

MEMORANDUM FOR THE RESPONDENTS IN OPPOSITION

Petitioners brought this action against the President and other federal officials, seeking a declaration that the Fourteenth Amendment to the Constitution of the United States is invalid because unlawfully adopted, and an injunction restraining respondents from enforcing its provisions. The district court dismissed the suit for want of jurisdiction because of petitioners' lack of standing and the absence of a justiciable

controversy. 265 F. Supp. 823. The court pointed out that it appeared during the hearing that petitioners' claimed injury was that the individual petitioners "are being forced to send their white children to schools with Negro children, contrary to the laws of Maryland." 265 F. Supp. at 825. The court of appeals summarily affirmed. 391 F. 2d 933.

It is plain that the petition presents no substantial question warranting further review. *Brown* v. *Board of Education*, 347 U.S. 483. It should, therefore, be denied.

Respectfully submitted.

ERWIN N. GRISWOLD,
Solicitor General.

JULY 1968.

☆ U. S. GOVERNMENT PRINTING OFFICE: 1968 312794 8

LIBRARY
SUPREME COURT, U. S.

No. 207

FILED
JUL 30 1968
JOHN F. DAVIS, CLERK

IN THE

Supreme Court of the United States

OCTOBER TERM, 1968

THE MARYLAND PETITION COMMITTEE, ET AL.,
PETITIONERS

v.

LYNDON B. JOHNSON, ET AL.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

MEMORANDUM FOR THE PETITIONERS IN REPLY TO THE RESPONDENTS' OPPOSITION MEMORANDUM

GEO. WASHINGTON WILLIAMS,
Solicitor for the Petitioners

King Bros., Inc., Printers, 208 N. Calvert St., Baltimore, Md. (7-23-68—50)

IN THE

Supreme Court of the United States

OCTOBER TERM, 1968

No. 207

THE MARYLAND PETITION COMMITTEE, ET AL.,
PETITIONERS

v.

LYNDON B. JOHNSON, ET AL.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

MEMORANDUM FOR THE PETITIONERS IN REPLY TO THE RESPONDENTS' OPPOSITION MEMORANDUM

REPLY TO THE MEMORANDUM FOR THE RESPONDENTS IN OPPOSITION

We vigorously deny that: "It is plain that the Petition presents no substantial question warranting further review" and the Statement is supplemented by citing *Brown vs Board of Education,* and concludes, "It should, therefore, be denied." This obviously, is a case for the Supreme Court, as the lower courts are supposed, at least

generally speaking, to act on a *stare decisis* basis, so ergo, they have given us no particular concern, but now, we are deeply concerned, and ask for at least a clearance of the atmosphere, which is now somewhat clouded by a number of old cases. However, at least in some areas, the atmosphere is clearing, as note such as the recent *Flast Case*. We contend, now that the time has come for a complete clearance of the questions here presented, and we therefore object to the matter being co cavalierly brushed off on this vital matter.

1. As this is a Class Suit, it is outside the range of the *Frothingham* and *Fairchild Cases,* as to taxpayers *et als.* The *Flast Case* leads directly to a necessity of taking up and deciding this Case. It is obvious that these two Cases must go the way of the others in recent years.

The importance and vitality of *School Matters* and the system of making laws in regards to elections, in the family life and needs in child upbringing has been shown by the Case referred to by the *Solicitor General* and cannot, therefore, be *submerged here.* Our contention, however, is that such matters rest in the *voters* and the State's judgment for decision, and we contend, *first,* that such matters are beyond the range of the *14th Amendment,* and *secondly,* if within its range, that it is only a *parasite* and not a *limb* of the Tree, the Constitution, and, therefore, our school problems are for the voters and the State, and therefore, is a part of the duty of the *Class here involved,* to handle.

The said *Brown Case,* however, has made an upheaval in the School area that had been settled for nearly a hundred years as was done by the Reapportionment case in both of which these Petitioners, in the broader field, have a personal interest in the several capacities as set

forth. We, therefore, contend that tax-payers and voters have now legally been emasculated to the point of impotence, because of either or both of the above reasons. The Court must protect the people and their individual rights as they existed just before the *Brown and Reapportionment et al cases,* through the control by them of their State. They were existing rights approved by the Petitioners and, generally their Class, of which they have now been robbed.

2. That the construction of the Constitution and the nullifying of the things violating it, is the prime duty of this Court. That it is, in its primary function, a combination of *Argus* and *Cerberus,* no one will deny, though like Argus, it may, along with the gods, at times nod. We are now asking that the Court say whether, as a matter of Fact and Law, the 14th Amendment is constitutionally a part of the Constitution, and for the reasons set forth in our two Petitions. We are here, however, and therefore have emphasized the *extra-legislation field* and the use of the word *Present* as clearly showing that the necessary majority was never obtained in *proposing* it. See Impeachments, Treaty and Yea and Nay voting Provisions, which we emphasize as vigorously as permissive.

3. We, however, content ourselves, in the matter of Ratifications, by resting on our Case made out in said Petitions, though we still vigorously contend that we have shown that the ratification was spurious, and, for both reasons, our Prayer should be granted.

4. We can understand the desire to respect a coordinate body of the Federal Government, but in matters of *respect* others are involved, too, e.g. the Constitution and such as these Petitioners, but, from time to time, little

respect is shown to them, in which these Petitioners rights are bound up. These Rights directly affect the Petitions, aside from any interest the State as a whole, may have in the matter. The State had expressed the voters wishes prior to these decisions, therefore, our State did take steps to protect itself and *its people* but without end results; so, if these Petitioners can show, as they have shown, Class effects, they are not precluded from the judgment of this Court in the pursuit of these particular rights, which are too clear to require further presentation.

If this is largely regurgitation, it is felt desirable in view of the effects on their pre-existing rights.

Respectfully submitted,

GEO. WASHINGTON WILLIAMS
Solicitor for the Petitioners